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9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11 **OAKLAND DIVISION**

12

13 LAURI VALJAKKA,

14 Plaintiff,

15 v.

16 NETFLIX, INC.,

17 Defendant.

18 Case No. 4:22-cv-01490-JST

19 **DEFENDANT NETFLIX, INC.'S REPLY IN
SUPPORT OF OPPOSED MOTION FOR
LEAVE TO AMEND ITS ANSWER TO
ADD A SINGLE CUVTA
COUNTERCLAIM**

20

21 Judge: Hon. Jon S. Tigar

22 Date: September 21, 2023

23 Time: 2:00 p.m.

24 Crtrm: 6 – 2nd Floor

MEMORANDUM OF POINTS AND AUTHORITIES

There is good cause to modify the scheduling order and grant Netflix leave to amend its answer to add a single counterclaim for a violation of the California Uniform Voidable Transactions Act (“CUVTA”). *See* Fed. R. Civ. P. 15, 16(b).

In response to Netflix’s Motion for Leave to Amend its Answer to Add a Single CUVTA Counterclaim (Dkt. 128), Plaintiff Lauri Valjakka (“Valjakka”) filed a 2-page Opposition (Dkt. 141) that is identical to his other opposition (Dkt. 142) to Netflix’s Motion for Leave to Amend the Scheduling Order to Allow Minimal, Targeted CUVTA Discovery. Valjakka did not address the applicable factors, and simply disputes that CUVTA applies to the transfers at issue, *i.e.*, the merits. Dkt. 141 at 2–3. The ample factual and legal basis as to why CUVTA applies to the transfers at issue is explained in detail in Netflix’s proposed counterclaim (Dkt. 128, Ex. A), its motion for a preliminary injunction (Dkt. 127), and its concurrently-filed reply in support of the motion for a preliminary injunction, and therefore is not repeated here.

As discussed in Netflix’s Motion for Leave to Amend its Answer to Add a Single CUVTA Counterclaim (Dkt. 128), there is good cause to allow Netflix to add the CUVTA claim under Rule 16(b), and Netflix’s proposed amendment is proper under Rule 15(a).

First, “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” *Strickland v. Ujiri*, No. 20-CV-981-YGR, 2020 WL 5530076, at *1 (N.D. Cal. Sept. 15, 2020) (quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)). The record regarding Netflix’s diligence is amply set forth in its Motions to Amend The Scheduling Order and Motion for a Preliminary Injunction (Dkts. 127, 128, 129). Valjakka does not contest Netflix’s diligence.

Second, Rule 15 specifies that “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). “Under Rule 15(a), ‘[t]he four factors commonly used to determine the propriety of a motion for leave to amend are bad faith, undue delay, prejudice to the opposing party, and futility of amendment.’” *Id.* (quoting *Abels v. JBC Legal Group, P.C.*, 229 F.R.D. 152, 155-56 (N.D. Cal. 2005)). “According to the Ninth Circuit, ‘the crucial factor is the resulting prejudice to the opposing party,’ and the burden of showing that prejudice is on the party opposing

1 amendment.” *PNC Bank, N.A. v. Smith*, No. 2:10-CV-1916-JAM-EFB, 2013 WL 3155013, at *1
 2 (E.D. Cal. June 18, 2013) (quoting *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973)).
 3 Valjakka does not argue that Netflix acted in bad faith or delayed bringing its CUVTA claim. Nor
 4 does he argue that he would be prejudiced by allowing Netflix to amend to add a CUVTA
 5 counterclaim. *See PNC Bank, N.A. v. Smith*, No. 2:10-CV-1916-JAM-EFB, 2013 WL 3155013, at
 6 *2 (E.D. Cal. June 18, 2013) (granting motion for leave to file proposed counterclaims even though
 7 the case had been “pending for over two and a half years,” because “plaintiff has not shown that
 8 permitting [defendant] to add her counterclaims will prolong this case”).

9 For the foregoing reasons, Netflix respectfully requests that the Court amend the scheduling
 10 order to allow Netflix to amend its answer and add a counterclaim under CUVTA.

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 12 Dated: September 7, 2023

Respectfully submitted,

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